

## **REMARKS**

### **I. Introduction**

Claims 1 to 9 are pending in the present application. In view of the preceding amendments and following remarks, Applicants respectfully request reconsideration of the application.

### **II. Rejection of Claims 1, 2, 6 and 7 Under 35 U.S.C. §102(b)**

Claims 1, 2, 6 and 7 were rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 5,462,322 ("Berezansky"). Applicants respectfully submit that Berezansky does not anticipate claims 1, 2, 6 and 7 for the following reasons.

Claim 1 relates to a drum closure, comprising a top clamp configured with a top surface and a bottom surface and at least one threaded top clamp bolt hole extending through a body of the top clamp, a base clamp configured with a bottom surface and at least one threaded base clamp bolt hole extending through a body of the bottom surface; and a bolt inserted through the top clamp bolt hole and the base clamp bolt hole and configured to extend from a secured position to an unsecured position, wherein the bottom surface of the top clamp and the top surface of the base clamp are configured to form in unison a lip holding area for a drum and the top clamp and base clamp are configured to be inserted around a portion of a drum lid and drum body interface to secure the drum lid to the drum body, the base clamp configured to rotate from the top clamp in the unsecured position. Claim 1 has been amended such that the base clamp has a fitting inserted into the base clamp to accept and secure the bolt. Support for the amendment to claim 1 is found, for example, on page 4, lines 21 to 31.

Berezansky relates to a portable door lock. The portable door lock has separate end portions 5 and 6 that selectively pivot the clamp halves 1 and 2 to bring opposite ends of the lock together or to move them apart. The separate end portions 5 and 6 are connected together through a screw 4 which is rotated by hand or by a screwdriver. Berezansky does not disclose or suggest that the base clamp 5 has a fitting inserted into the base clamp to accept and secure the bolt. As Berezansky does not disclose or suggest any such configuration, Applicants respectfully request withdrawal of the rejection to claims 1, 2, 6 and 7.

### III. Rejection of Claims 1 to 2 and 5 to 7 Under 35 U.S.C. §102(b)

Claims 1, 2 and 5 to 7 were rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 6,435,576 ("Kusta"). Applicants respectfully submit that Kusta does not anticipate claims 1, 2 and 5 to 7 for the following reasons.

Kusta relates to a closure ring assembly for an open-head drum. Title. Kusta provides individual lugs 34, 36 connected to ring which fits around a head of a drum. Kusta does not provide, disclose or suggest a bolt inserted through the top clamp bolt hole and the base clamp bolt hole and configured to extend from a secured position to an unsecured position, wherein the bottom surface of the top clamp and the top surface of the base clamp are configured to form in unison a lip holding area for a drum and the top clamp and base clamp are configured to be inserted around a portion of a drum lid and drum body interface to secure the drum lid to the drum body, the base clamp configured to rotate from the top clamp in the unsecured position, wherein the base clamp has a fitting inserted into the base clamp to accept and secure the bolt. The Office Action alleges that Kusta provides a configured where claim 34 can be rotated relative to the top clamp 36 about a hinge located in the ring diametrically opposite of the lugs. Applicants respectfully submit that Kusta does not provide such a configuration, but rather a solid ring. The solid ring fits over top a drum lid in a single piece and Kusta does not provide any arrangement for rotation. As Kusta does not disclose or suggest any such configuration, applicants respectfully request withdrawal of the rejections to claims 1, 2, 5 to 7.

To anticipate a claim, each and every element as set forth in the claim must be found in a single prior art reference. Verdegaal Bros. v. Union Oil Co. of Calif., 814 F.2d 628, 631, 2 U.S.P.Q.2d 1051, 1053 (Fed. Cir. 1987). Furthermore, "[t]he identical invention must be shown in as complete detail as is contained in the . . . claim." Richardson v. Suzuki Motor Co., 868 F.2d 1226, 1236, 9 U.S.P.Q.2d 1913, 1920 (Fed. Cir. 1989). That is, the prior art must describe the elements arranged as required by the claims. In re Bond, 910 F.2d 831, 15 U.S.P.Q.2d 1566 (Fed. Cir. 1990). As more fully set forth above, it is respectfully submitted that Kusta does not disclose, or even suggest all of the limitations of claim 1. It is therefore respectfully submitted that the Kusta patent does not anticipate amended claim 1.

Additionally, to reject a claim under 35 U.S.C. § 102, the Examiner must demonstrate that each and every claim limitation is contained in a single prior art reference. See, Scripps Clinic & Research Foundation v. Genentech, Inc., 18 U.S.P.Q.2d 1001, 1010 (Fed. Cir. 1991). Still further, not only must each of the claim limitations be identically disclosed, an anticipatory reference must also enable a person having ordinary skill in the art to practice the claimed invention, namely the

inventions of the rejected claims, as discussed above. See, Akzo, N.V. v. U.S.I.T.C., 1 U.S.P.Q.2d 1241, 1245 (Fed. Cir. 1986). In particular, it is respectfully submitted that, at least for the reasons discussed above, the reference relied upon would not enable a person having ordinary skill in the art to practice the inventions of the rejected claims, as discussed above.

Claims 2 and 5 to 7 depend from claim 1 and therefore include all of the features of amended claim 1. Applicants respectfully request withdrawal of the rejections to claims 2 and 5 to 7 for at least the reasons provided above in relation to claim 1.

#### **IV. Rejection of Claims 3 to 5 Under 35 U.S.C. §103(a)**

Claims 3 to 5 were rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 5,462,322 ("Berezansky"). Applicants respectfully submit that Berezansky does not render obvious claims 3 to 5 for the following reasons.

Claims 3 to 5 depend from claim 1 and therefore include all of the features of amended claim 1.

As provided above, Berezansky does not disclose or suggest the features of claim 1, wherein claim 1 recites the features of a base clamp which has a fitting inserted into the base clamp to accept and secure the bolt. Berezansky is silent in this regards and as such Berezansky does not render obvious claims 3 to 5 of the present invention. Applicants respectfully request withdrawal of the rejection to claims 3 to 5.

#### **V. Rejection of Claims 3 and 4 Under 35 U.S.C. §103(a)**

Claims 3 and 4 were rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 6,435,576 ("Kusta"). Applicants respectfully submit that Kusta does not render obvious claims 3 and 4 for the following reasons.

Claims 3 and 4 depend from claim 1 and therefore include all the features of amended claim 1.

As provided above, Kusta does not disclose or suggest the features of claim 1. Kusta does not provide, disclose or suggest a bolt inserted through the top clamp bolt hole and the base clamp bolt hole and configured to extend from a secured position to an unsecured position, wherein the bottom surface of the top clamp and the top surface of the base clamp are configured to form in unison a lip holding area for a drum and the top clamp and base clamp are configured to be

inserted around a portion of a drum lid and drum body interface to secure the drum lid to the drum body, the base clamp configured to rotate from the top clamp in the unsecured position, wherein the base clamp has a fitting inserted into the base clamp to accept and secure the bolt. Kusta is silent in this regards and as such Kusta does not render obvious claims 3 and 4 of the present invention. Applicants respectfully request withdrawal of the rejection to claims 3 and 4.

**VI. Rejection of Claims 1 to 7 Under 35 U.S.C. § 103(a)**

Claims 1 to 7 were rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 1,059,747 ("Montross"). Applicants respectfully submit that Montross does not render obvious claims 1 to 7 for the following reasons.

Montross relates to a burial casket. The burial casket is provided with a closing device which seals the exterior lip of the casket. The Office Action states that Montross provides a top clamp (7), a bolt (15) and a lip holding area (9) and (10). The Office Action further alleges that the bottom clamp (17) can rotate from the top clamp (7).

Applicants have amended claim 1 to recite the feature of a bolt inserted through the top clamp bolt hole and the base clamp bolt hole and configured to extend from a secured position to an unsecured position, wherein the bottom surface of the top clamp and the top surface of the base clamp are configured to form in unison a lip holding area for a drum and the top clamp and base clamp are configured to be inserted around a portion of a drum lid and drum body interface to secure the drum lid to the drum body, the base clamp configured to rotate from the top clamp in the unsecured position, wherein the base clamp has a fitting inserted into the base clamp to accept and secure the bolt. Montross merely provides a screwed connection which joins the two sections of the camp together. Montross does not provide the base clamp with any fittings whatsoever to accept and secure the bolt and therefore Montross does not render obvious claim 1.

Claims 2 to 7 depend from claim 1 and therefore include all of the features of claim 1. Applicants respectfully request withdrawal of the rejections to claims 2 to 7.

**VII. Rejection of Claims 8 and 9 Under 35 U.S.C. § 103(a)**

Claims 8 and 9 were rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 1,059,747 ("Montross") in view of U.S. Patent No. 1,450,687 ("Kunin").

Claim 8 relates to a method of closing a drum. Claim 8 recites the steps of providing three drum closure arrangements, positioning a top clamp of each of the three drum closure arrangements on a drum lid interface, positioning a base clamp of each of the three drum closure arrangements on the drum lid interface, inserting a bolt through the top clamp into the base clamp, and tightening the bolt such that the top clamps and the base clamps form a lip holding area wherein the bolt enters into the base clamp and is captured by a fitting provided in the base clamp.

As disclosed above, Montross does disclose or suggest a configuration or method of closing a drum having the steps of providing three drum closure arrangements, positioning a top clamp of each of the three drum closure arrangements on a drum lid interface, positioning a base clamp of each of the three drum closure arrangements on the drum lid interface, inserting a bolt through the top clamp into the base clamp; and tightening the bolt such that the top clamps and the base clamps form a lip holding area wherein the bolt enters into the base clamp and is captured by a fitting provided in the base clamp.

The addition of Kunin does not cure the critical defects of the Montross reference. Kunin relates to a cooking vessel. Title. The Office Action merely uses Kunin to disclose three connection units on the top of a cooking vessel. Kunin does not disclose a method of closing a drum having the steps of providing three drum closure arrangements, positioning a top clamp of each of the three drum closure arrangements on a drum lid interface, positioning a base clamp of each of the three drum closure arrangements on the drum lid interface, inserting a bolt through the top clamp into the base clamp, and tightening the bolt such that the top clamps and the base clamps form a lip holding area wherein the bolt enters into the base clamp and is captured by a fitting provided in the base clamp. Kunin does not disclose or suggest any configuration which has a bolt which enters into the base clamp and is captured by a fitting provided in the base clamp.

In rejecting a claim under 35 U.S.C. § 103(a), the Examiner bears the initial burden of presenting a *prima facie* case of obviousness. *In re Rijckaert*, 9 F.3d 1531, 1532, 28 U.S.P.Q.2d 1955, 1956 (Fed. Cir. 1993). To establish *prima facie* obviousness, three criteria must be satisfied. First, there must be some suggestion or motivation to modify or combine reference teachings. *In re Fine*, 837 F.2d 1071, 5 U.S.P.Q.2d 1596 (Fed. Cir. 1988). This teaching or suggestion to make the claimed combination must be found in the prior art and not based on the application disclosure. *In re Vaeck*, 947 F.2d 488, 20 U.S.P.Q.2d 1438 (Fed. Cir. 1991).

Second, there must be a reasonable expectation of success. *In re Merck & Co., Inc.*, 800 F.2d 1091, 231 U.S.P.Q. 375 (Fed. Cir. 1986). Third, the prior art reference(s) must teach or suggest all of the claim limitations. *In re Royka*, 490 F.2d 981, 180 U.S.P.Q. 580 (C.C.P.A. 1974).

Moreover, it is respectfully submitted that the cases of *In re Fine*, *supra*, and *In re Jones*, 21 U.S.P.Q.2d 1941 (Fed. Cir. 1992), make plain that the Office Action's generalized assertions that it would have been obvious to modify or combine the references do not properly support a § 103 rejection. It is respectfully submitted that those cases make plain that the Office Action reflects a subjective "obvious to try" standard, and therefore does not reflect the proper evidence to support an obviousness rejection based on the references relied upon. In particular, the Court in the case of *In re Fine* stated that:

The PTO has the burden under section 103 to establish a *prima facie* case of obviousness. It can satisfy this burden only by showing some objective teaching in the prior art or that knowledge generally available to one of ordinary skill in the art would lead that individual to combine the relevant teachings of the references. This it has not done. . . .

**Instead, the Examiner relies on hindsight in reaching his obviousness determination. . . . One cannot use hindsight reconstruction to pick and choose among isolated disclosures in the prior art to deprecate the claimed invention.**

*In re Fine*, 5 U.S.P.Q.2d at 1598 to 1600 (citations omitted; italics in original; emphasis added). Likewise, the Court in the case of *In re Jones* stated that:

Before the PTO may combine the disclosures of two or more prior art references in order to establish *prima facie* obviousness, there must be some suggestion for doing so, found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. . . .

**Conspicuously missing from this record is any evidence, other than the PTO's speculation (if it be called evidence) that one of ordinary skill . . . would have been motivated to make the modifications . . . necessary to arrive at the claimed [invention].**

*In re Jones*, 21 U.S.P.Q.2d at 1943, 1944 (citations omitted; italics in original).

That is exactly the case here since it is believed and respectfully submitted that the present Office Action offers no evidence whatsoever, but only conclusory hindsight, reconstruction and speculation, which these cases have indicated does not constitute evidence that will support a proper obviousness finding. Unsupported assertions are not evidence as to why a person having ordinary skill in

the art would be motivated to modify or combine references to provide the claimed subject matter of the claims to address the problems met thereby. Accordingly, the Office must provide proper evidence of a motivation for modifying or combining the references to provide the claimed subject matter.

More recently, the Federal Circuit in the case of *In re Kotzab* has made plain that even if a claim concerns a “technologically simple concept” — which is not the case here — there still must be some finding as to the “specific understanding or principle within the knowledge of a skilled artisan” that would motivate a person having no knowledge of the claimed subject matter to “make the combination in the manner claimed,” stating that:

In this case, the Examiner and the Board fell into the hindsight trap. The idea of a single sensor controlling multiple valves, as opposed to multiple sensors controlling multiple valves, is a technologically simple concept. *With this simple concept in mind, the Patent and Trademark Office found prior art statements that in the abstract appeared to suggest the claimed limitation. But, there was no finding as to the specific understanding or principle within the knowledge of a skilled artisan that would have motivated one with no knowledge of Kotzab's invention to make the combination in the manner claimed.* In light of our holding of the absence of a motivation to combine the teachings in Evans, we conclude that the Board did not make out a proper *prima facie* case of obviousness in rejecting [the] claims . . . under 35 U.S.C. Section 103(a) over Evans.

*In re Kotzab*, 55 U.S.P.Q.2d 1313, 1318 (Fed. Cir. 2000) (emphasis added). Again, it is believed that there have been no such findings.

Accordingly, there is no evidence that the references relied upon, whether taken alone, combined or modified, would provide the features and benefits of claim 8. It is therefore respectfully submitted that claim 8 is allowable for these reasons.

Claim 9 depends from claim 8 and therefore include all of the features of claim 8. Applicants respectfully request withdrawal of the rejection of claim 9 for at least the reasons provided above in relation to claim 8.

In view of all of the foregoing, withdrawal of this rejection is respectfully requested.

**VIII. Conclusion**

It is respectfully submitted that all pending claims are allowable. All issues raised by the Examiner having been addressed, an early and favorable action on the merits is earnestly solicited.

Respectfully submitted,

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